

EXHIBIT 1



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Primary Contact: Kristina Cates
Laboratory Corporation of America Holdings
531 S Spring St
Burlington, NC 27215-5866

Electronic copy provided to: Anetta Outlaw
Heather Long
Mary Beth Maines

Entity: Laboratory Corporation of America
Entity ID Number 0035873

Entity Served: Laboratory Corporation Of America

Title of Action: Allon Hull vs. Laboratory Corporation of America

Matter Name/ID: Allon Hull vs. Laboratory Corp. of America (13665574)

Document(s) Type: Summons/Complaint

Nature of Action: Labor / Employment

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Case/Reference No: CVRI2300867

Jurisdiction Served: California

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SHELLEY G. BRYANT - #222925
BRYANT WHITTEN, LLP

8050 North Palm Avenue, Suite 210
Fresno, California 93711
(559) 494-4910 Telephone
(559) 421-0369 Facsimile
Email: shelley@bwlaw.com

Attorneys for Plaintiffs, ALLON HULL and CHRIS SCHOTT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

ALLON HULL, and CHRIS SCHOTT,

Plaintiffs,

vs.

LABORATORY CORPORATION OF
AMERICA, a Delaware Corporation, and Does
1 through 20, inclusive,

Defendants.

Case No. CVRI 2300867

COMPLAINT FOR FAILURE TO PAY
SALES COMMISSIONS BECAUSE
IT'S SIMPLY TOO MUCH MONEY
TO PAY, BREACH OF CONTRACT
(WRITTEN, ORAL, IMPLIED IN-LAW
AND FACT) IN VIOLATION OF
LABOR CODE § 2751, B&P CODE §
17200 et seq, FRAUDULENT
MISREPRESENTATION,
NEGLECTIVE
MISREPRESENTATION, QUANTUM
MERUIT, UNJUST ENRICHMENT,
PUNITIVE DAMAGES AND
ATTORNEYS' FEES

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs, ALLON HULL and CHRIS SCHOTT, and allege as follows:

PARTIES

1. Plaintiff, ALLON HULL, is an adult female and was at all times herein mentioned a resident of the County of Riverside, State of California. This Plaintiff was employed in Riverside County by Defendants from approximately November 2015, to present. She currently works as a Regional Business Development Executive ("RBDE").

2. Plaintiff, CHRIS SCHOTT, is an adult male and was at all times herein mentioned a resident of the State of California. Plaintiff was employed by Defendants in the State of California from approximately November 2001, to present. He currently works as a Sales Manager. Plaintiffs,

1 HULL and SCHOTT, collectively, are hereinafter referred to as "Plaintiffs."

2 3. Defendant, LABORATORY CORPORATION OF AMERICA (hereinafter referred
3 to as "LabCorp"), is a Delaware Corporation, doing business in RIVERSIDE County, California.

4 4. Venue is proper in this county because: (1) Plaintiff HULL resides and worked for
5 LabCorp in RIVERSIDE County; (2) the injuries of Plaintiff HULL occurred in RIVERSIDE County;
6 and (3) the employment agreement between LabCorp and Plaintiff HULL was formed and to be
7 performed in RIVERSIDE County. This court is the proper court because the amount at issue exceeds
8 the jurisdictional minimum of this court.

9 5. The true names and capacities of the Defendants named herein as Does 1 through 20,
10 inclusive, whether individual, corporate, associate or otherwise, are unknown to the Plaintiffs who,
11 therefore, sues such Defendants by fictitious names pursuant to California Code of Civil Procedure
12 §474. Plaintiffs are informed and believes, and on that basis alleges, that each Defendant sued under
13 such fictitious name is in some manner responsible for the wrongs and the damages as alleged below,
14 and in so acting was functioning as the owner, shareholder, principal, agent, servant, partner, joint
15 venturer, alter-ego, employee, proxy, managing agent, and principal of the co-Defendants, and in
16 performing the acts mentioned below was acting, at least in part, within the course and scope of such
17 authority as such agent, proxy, servant, partner, joint venturer, employee, alter-ego, managing agent,
18 and principal with the permission and consent of the co-Defendants.

19 6. Plaintiffs are informed and believe, and thereupon allege, that each of the Defendants
20 sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint
21 venturer, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer
22 and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and
23 scope of such employment and agency, with the express and implied permission, consent and
24 knowledge, approval and/or ratification of the other Defendants. The above co-Defendants, managing
25 agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the
26 unlawful acts described herein.

27 7. At all times herein, Plaintiffs were duly qualified and did perform their employment
28 duties in a satisfactory manner. Plaintiffs performed and were willing to continue to perform all duties

1 and responsibilities on their part to be performed, which duties and responsibilities were part of the
2 employment relationship between Defendants and Plaintiffs.

3 8. Plaintiffs were, at all times herein, an employee covered by the Labor Code and all of
4 the protections it affords employees working in the state.

5 9. Defendants were at all times herein mentioned, an employer within the meaning of the
6 Labor Code, as such, statutorily required to comply with the provisions mentioned therein.

7 **Any Employer That Agrees To Pay Commissions To Employees In**
8 **California Must Have A Contract Signed By The Employee**

9 10. For decades, big companies like Laboratory Corporation of America ("LabCorp") have
10 used sales employees to grow their businesses. The companies promised big commissions as
11 incentive to meet and exceed sales goals. Sales employees often dream of making the big sale so that
12 they can earn big commissions, and they often work day and night for their employers.

13 11. Historically, the companies have done well because of the sales employees. Many have
14 grown into multi-billion-dollar corporations with publicly traded stock, others remain private. Either
15 way, corporate greed and/or Wall Street pressure to increase profits causes these companies to spend
16 inordinate amounts of time, money and energy to grow the business. Some companies are willing to
17 do anything, including breaking the law, just to increase.

18 12. During the same period, the sales employees have not done well. Many have been
19 cheated out of their commission by big companies in ways that will shock the conscience. For
20 example, IBM created a compensation contract for sales executives, but then claimed it not a contract
21 at all. The company told sales executives that their commissions were not capped, but then refused
22 to pay full commissions on big deals. These topics, and others, have led to decades of litigation and
23 court decisions that mostly favored IBM and the big companies. Several of these IBM cases were
24 filed in North Carolina courts and/or decided based upon North Carolina law. LabCorp has its
25 headquarters in North Carolina.

26 13. In 1963, the Legislature in the Great State of California discovered that many
27 out-of-state companies were hiring folks to sell goods and services within the state, promised big
28 commissions, and then refused to pay up. The employees were left with the impossible task of chasing

1 down foreign corporations in hopes of getting paid so they could feed themselves and their families.

2 14. That year, Labor Code §§ 2751 and 2752 were enacted "to prevent out-of-state
3 employers from deceiving employees compensated through commissions by requiring a written
4 employment contract." 2011 Cal ALS 556, 2011 Cal AB 1396, 2011 Cal Stats. ch. 556 The latter
5 provision called for treble damages for violations. These laws remained in effect for a long time, but
6 only required written contracts for companies with no fixed place of operation in California.

7 15. In 1999, the United States District Court in the Northern District of California found
8 that Labor Code § 2751 violated the US Constitution, specifically by violating the equal protection
9 clause and commerce clause, thereby making the code section unenforceable. Essentially, the court
10 found that provisions discriminated against out-of-state companies.

11 16. About a decade later, several states, including Georgia, Louisiana, Maryland,
12 Tennessee, and then California, passed laws requiring all employers to have written
13 commission-based employment contracts. These states believed that such measures were " needed
14 in order to protect employees from fraud and abuse, as well as protect employers from unnecessary
15 litigation resulting from vague oral contracts." Ibid. California eliminated the treble damages
16 provision and required all employers, in and out of state, to comply. The legislative history says:
17 [T]he intent of this bill is to restore the employee protections that had been in effect prior to that
18 holding by making Section 2751 of the Labor Code apply with equal force to employers with a fixed
19 place of business in the state and to employers who do not have a fixed place of business in the state.

20 17. The amended Section 2751 became operative on January 1, 2013. Its says exactly what
21 the Legislature intended:

22 (a) Whenever an employer enters into a contract of employment with an
23 employee for services to be rendered within this state and the contemplated method of
24 payment of the employee involves commissions, the contract shall be in writing and
shall set forth the method by which the commissions shall be computed and paid.

25 (b) The employer shall give a signed copy of the contract to every employee
26 who is a party thereto and shall obtain a signed receipt for the contract from each
27 employee. In the case of a contract that expires and where the parties nevertheless
continue to work under the terms of the expired contract, the contract terms are
presumed to remain in full force and effect until the contract is superseded or
employment is terminated by either party.

28 ///

1 18. This was kind of an earth-shattering event for all companies who employed sales
2 people within the State of California. Almost all of the big law firms for employers told the
3 companies about the change.

4 19. In November 2011, the big law firm of Jones Day published its "2011 California Labor
5 and Employment Legislative Update" for big employer clients. The update said:

6 The new statute requires that, by January 1, 2013, any employer who enters into a
7 contract of employment involving commissions as a method of payment must put the
8 contract in writing. The written agreement must set forth the method by which
9 commissions are computed and paid. . . .

10 The new law applies to all employers with commissioned employees in California,
11 whether or not the employer is located in California. Labor Code 2751 also requires
12 the employer to provide a signed copy of the employment agreement to each employee
13 who is a party to it. It specifies that if the contract expires but the parties continue to
14 perform under its terms, the contract's terms are presumed to remain in full force until
15 a new contract superseding its terms is executed or either party terminates the
16 employment relationship.

17 20. A few months later, big law firm Shepard Mullin published a paper for employers
18 entitled: "New California Commission Contract Rules - It is Not Too Early To Get Ready!" The first
19 line of the paper said: "Employers with sales teams in California need to get ready. California has a
20 new commission contract law . . ." The law firm warned:

21 . . . Here's the tricky part. Going forward, **when a contract governing commissions
22 expires without being replaced but the employee continues work, the terms of the
23 "expired" contract will apply to commissions until the parties sign a new
24 agreement** or until the employment is terminated. . . .

25 The Legislature believes AB 1396 will protect employees from fraud and abuse and
26 employers from unnecessary litigation resulting from vague oral contracts. (emphasis
27 added)

28 21. In December 2012, the big law firm of Payne Fears published an "Insights" paper for
employers entitled: "BEGINNING ON JANUARY 1, 2013, COMMISSION AGREEMENTS FOR
CALIFORNIA EMPLOYEES MUST BE IN WRITING AND SIGNED." The law firm warned
employers:

What To Do By January 1, 2013?

With the January 1, 2013 deadline rapidly approaching, employers should ensure that
written commission agreements which comply with section 2751 are in place before
the deadline. For employers that already have a written commission agreement, it is
also a good time to review the agreement to ensure it complies with the new law.

1 Written commission agreements should include Employers must provide signed
2 copies of the agreement to the employee and require that the employee sign an
acknowledgment confirming receipt of a signed copy of the agreement.

3 22. That same month, big law firm Perkins Coie published a paper for employers entitled:
4 "California Law Soon To Require Written Contracts For Employees Paid On Commission (AB 1396;
5 Cal. Labor Code§ 2751)." This warning was clear:

6 On January 1, 2013, all employers with employees in California who are paid by
7 commission will be required to have written contracts with those employees. **This law**
8 **is a significant departure from the previous law**, which only required employers
based outside of California to have written contracts with their commissioned
employees. . . . (emphasis added)

9 **Potential penalties for non-compliance.** While the statute does not set forth specific
10 penalties, an employer risks exposure for allegedly unpaid or late commissions,
11 damages under California's Unfair Competition Law (UCL), or penalties under
California's Private Attorney General Act (PAGA), as well as associated attorneys'
fees.

12 23. In February 2013, a month after the new law went into effect, big law firm Gordon
13 Rees published a paper entitled: "New Legislation Requires Written Agreements on Compensation."
14 It clearly advised companies with employees in California to get advice from an attorney:

15 ***Employers Must Memorialize Commissioned Employees' Wages***

16 Effective Jan. 1, new legislation restored a regulation requiring California employers
17 to provide written agreements to all employees earning commissions. The law, AB
1396, revises and reinstates §2751 of the California Labor Code, which a federal court
found unconstitutional in 1999.

18 In light of these new requirements, California employers, and employers with
19 employees working in the state of California, should provide all employees with
20 written compensation agreements and memorialize existing agreements with
21 commissioned employees. Employers are urged to consult with counsel to determine
whether they may need assistance in drafting updated commission agreements or
updating their employee handbooks.

22 24. In July 2014, even after the dust settled, the California Chamber of Commerce
23 reminded employers of the new requirement and published a paper entitled: "Don't Forget: Put
24 Commission Agreements in Writing." It was clear like the others:

25 The law amended Labor Code section 2751 to provide that any employee hired to
26 perform work for commissions in California must receive a written contract that
includes the method for calculating and paying the commissions.

27 ***This legal requirement contains a number of potential pitfalls that could result in***
28 ***wage-and-hour lawsuits ...***

1 The employer must give the employee a copy of the contract and obtain a signed
2 acknowledgment from the employee that he/she received the contract.

3 25. In November 2018, Jerome Beard sued IBM after the company whittled down his
4 commission from \$2,901,806 to \$410,572, because it was "simply too much money to pay." Beard
5 was a salesman for IBM, made two big sales that should have earned him the \$3 million commission.
6 However, IBM retroactively capped his commissions and paid a fraction of what was owed. Beard
7 sued for, inter alia, breach of contract, violations of Labor Code section 2751, and Unfair Competition
8 Law (B&P Code section 17200 et seq.). IBM moved for summary judgement of Beard's claims.

9 26. In March 2019, the prominent big employment law firm, Seyfarth Shaw, published an
10 annual catalogue about how California law deviates from prevailing American labor and employment
11 law. It was extensive (356 pages). On page 218 of the catalogue, the law firm provided a breakdown
12 of Labor Code provisions, placing them into categories, including "Required employer disclosures."
13 That section says this about Section 2751: "Contract of employment for commissions. California
14 employers paying commissions must put the commission arrangement in a written contract and give
15 the employee a signed copy." This catalogue was used to train human resources personnel.

16 27. In June 2019, something big happened - the Beard case made headlines. IBM
17 successfully convinced the court that Beard's compensation plan was not a contract and the breach of
18 contract claim was dismissed. Beard successfully argued that, since his commission plan was not a
19 contract, IBM was in violation of Section 2751, and that he should be paid the full commissions under
20 other equitable legal theories. One blogger, the Vigilant Blog:News, trends and analysis in
21 employment law, HR, safety & workers' comp, posted with this heading: "Q&A: Say what you mean
22 in commission agreements." The post summarized the news about Beard concisely:

23 ***Words of Caution***

24 In a recent California case, the company whittled down a star salesperson's
25 commission from \$2,901,806 to \$410,572, because it was simply too much money to
26 pay. The employee sued, noting that a PowerPoint presentation stated that
27 commissions would be uncapped. The company tried to dismiss his complaint because
28 its written commission plan gave the company the right to modify or cancel the plan.
A federal district judge mostly sided with the employee and allowed several claims to
continue forward. The employee may now show that the company engaged in negligent
misrepresentation and was unjustly enriched by its actions. The employee can also
proceed with a claim that the company violated California Labor Code 2751 by failing
to state in writing "the method by which the commissions shall be computed and paid."

1 This California state law requires most commission agreements to be in writing, with
2 a signed copy of the contract given to affected employees, and a receipt obtained in
return (Beard v. IBM Corp., ND Cal, April 2019).

3 . . . Need a second opinion? Vigilant members should contact their dedicated
4 employment law attorney

5 28. In August 2019, another news story arose when David Swafford sued IBM in California
6 for essentially the same thing as Beard.

7 29. In November 2019, Business Wire reported that the case Swafford filed against IBM
8 was settled out of court to the parties' mutual satisfaction.

9 30. In April 2020, several web sites reported that another case had been filed against IBM
10 and the Beard case was headed to trial. The Register summarized the events this way:

11 This has been going on for more than 15 years, according to a separate complaint in
12 a similar case, Mark Comin v IBM. Yet, paperwork submitted in the Comin case stated
13 IBM's insistence that it has no contract with its sales people has put the company into
"a Catch-22 of its own making."

14 Section 2751 of the California Labor Code, enacted in 2013, requires employers
15 provide a written contract that spells out commission payments. The recent Comin
filing [PDF] stated: "[I]f IBM has no commissions contract, as IBM has convinced so
many courts, then it has perfected its own violation of Section 2751 in California."

16 IBM has tried to get around this by insisting its non-contract is a contract for the
17 purpose of satisfying California law, but isn't a contract such that it makes its
commission terms enforceable.

18 "IBM is trying to walk this very fine line that with regard to Section 2751, it has a
19 contract, but no contract for any other purpose," explained Matthew E. Lee, a partner
at Whitfield Bryson & Mason LLP and one of the attorneys representing Beard and
20 Comin, in a phone interview with The Register. "I don't understand that and, in my
experience, judges don't either. They either have a contract or don't have a contract."

21 Indeed, Judge Alsup in his order this week accepted IBM position that the tech titan's
22 disclaimer means its IPL isn't a contract and accordingly rejected IBM's effort to claim
the IPL is a contract just for the purpose of satisfying California law. "Since Section
2751 requires a 'contract' to satisfy its requirements, the IPL cannot do," his order in
23 the Beard case stated.

24 Lee said a jury will now have the opportunity to decide whether what IBM has been
25 doing is lawful, though he allowed that IBM may decide to settle. Only about four per
cent of federal cases end up going to trial, he said.

26 31. A few points are clear. First, in the State of California, an employer of sales people
27 paid by commission must have a signed contract. Second, employers have been on notice of this
28 requirement since 2012. Third, there is no plausible way for Defendant, Laboratory Corporation of

1 America to claim that it did not know of the contract requirement.

2 **LabCorp Knew That A Signed Commission Contract Was Required**

3 32. LabCorp has a huge in-house legal team that tracks employment laws throughout the
4 United States and in California. The team members routinely receive news and updates about
5 employment laws from a variety of sources including law firms, LinkedIn, the Chamber of Commerce,
6 professional blogs, news sources, in-house updates, and the like. The team is led by Chief Legal
7 Officer Sandra van der Vaart who has been with LabCorp for about 20 years. She earned a law degree
8 from the University of Virginia. Others on the team have law degrees and legal backgrounds. They
9 gave LabCorp executives, managers, supervisors and employees advice about administration and
10 application of these policies and pay plans. They used the updates along with their education, training,
11 experience to draft personnel policies and pay plans for employees. They knew of California's written
12 contract requirement for commission pay and the events of above, but consciously decided to pay
13 Plaintiffs and others by commission without a signed contract. They knowingly violated the law.

14 33. LabCorp has a huge Human Resources team that tracks employment laws throughout
15 the United States and in California. The HR team members routinely receive news and updates from
16 a variety of sources including law firms, LinkedIn, the Chamber of Commerce, professional blogs,
17 news sources, in-house updates, and the like. The team is led by the Chief Human Resources Officer,
18 Judi Seltz. She earned a masters degree in Human Resources Management. They used the updates
19 along with their education, training, experience to draft personnel policies and pay plans for
20 employees. They gave LabCorp executives, managers, supervisors and employees advice about
21 administration and application of these policies and pay plans. They knew of California's written
22 contract requirement for commission pay and the events of above, but consciously decided to pay
23 Plaintiffs and others by commission without a signed contract.

24 34. Labcorp has a whole National Sales Administration Team to deal with its large
25 commissioned sales force. The Sales Admin Team members routinely receive news and updates from
26 a variety of sources including law firms, LinkedIn, the Chamber of Commerce, professional blogs,
27 news sources, in-house updates, and the like. They used the updates along with their education,
28 training, experience to draft pay policies and pay plans for employees. They gave LabCorp executives,

1 managers, supervisors and employees advice about administration and application of these policies
2 and pay plans. They decided the amount of commission pay, the method for calculating commissions,
3 and whether a representative should receive, forfeit, return, or be denied commission pay. They
4 created complex schemes and calculations for determining the amount of commissions. They created
5 data banks from sales records and connected them to calculators so that LabCorp and commissioned
6 sales employees could calculate the amounts owed for commissions based on revenue data. They
7 controlled access to these calculators and that revenue data. They helped LabCorp make decisions
8 whenever it was necessary to recalculate, recover, offset, or deny payment of commissions. They
9 knew of California's written contract requirement for commission pay and the events of above, but
10 consciously decided to pay Plaintiffs and others by commission without a signed contract.

11 **LabCorp Made A Contract Of Employment With Plaintiffs**
12 **For Sales Services and The Payments Involved Commissions**

13 35. LabCorp provides comprehensive clinical laboratory and end-to-end drug development
14 services. It employs sales representatives with the title of Regional Business Development Executive
15 (RBDE) within the state. The RBDEs are primarily responsible for new account acquisition through
16 business development by representing Labcorp's Value-Based Care Programs and Services. The
17 business prospects include Accountable Care Organizations (groups of doctors, hospitals, and other
18 health care providers, who come together voluntarily to provide coordinated care), Federally Qualified
19 Health Centers (federally funded nonprofit health centers or clinics that serve medically underserved
20 areas and populations) and Large Complex customers that are affiliated with the Value Based Care
21 (a health care delivery model under which providers - hospitals, labs, doctors, nurses and others - are
22 paid based on the health outcomes of their patients and the quality of services rendered of the
23 business) segment. RBDEs have close interaction with the leadership of all internal, external, and
24 laboratory operations in collaboration with sales and operational teams to ensure client growth and
25 service delivery. RBDEs are responsible for the independent contribution of new sales growth, with
26 collaboration amongst regional sales team for presentations, client development, and service
27 implementation, and must develop and maintain a strong, accurate pipeline of potential clients .
28 LabCorp employs Regional Managers of Business Development (RMBD) which is a key leadership

1 position with responsibility for overseeing regional sales and account management professionals while
2 working with the Area Director to implement and drive strategic initiatives and launch new products
3 in conjunction with a fully integrated portfolio of specialty and esoteric testing laboratories.

4 36. Practically speaking, RBDEs are hired to sell and educate clients on diagnostic testing.
5 RMBDs are hired to oversee the performance of Sales Marketing Executives (SME) and Key Account
6 Executives (KAE). That is what they spend most of their time on and is the most important part of
7 the job.

8 37. LabCorp created a contract of employment with Plaintiffs, and employed Hull as an
9 RBDE and Schott as an RMBD. Plaintiff HULL worked in Corona California. Plaintiff SCHOTT
10 worked in the San Diego area. The RBDEs secured new business in their territories by selling
11 laboratory testing services of LabCorp, RMBDs coach, develop and motivate SMEs and KAEs to sell
12 and retain.

13 38. Plaintiff Hull and other commissioned employees were told, by company executives,
14 that they would be paid commissions for selling these lab services. LabCorp promised to pay, and
15 actually paid, Plaintiff Hull a 7% commission on all growth sales in excess of \$5,000. LabCorp
16 promised to pay, and actually paid, Plaintiff Schott a quarterly bonus based on a fixed percentage of
17 sales or profits as compensation for work to be performed. LabCorp and Plaintiffs used company
18 databases and records of sales and revenue to calculate the commissions and bonuses due Plaintiffs.
19 LabCorp made all of this information available to Plaintiffs without limitation. This conduct by
20 LabCorp and Plaintiffs shows an agreement or understanding that created an obligation for LabCorp
21 to pay Plaintiffs and other RBDEs and RMBDs the commissions and bonuses, and the parties had an
22 expressed or implied contract.

23 39. Prior to 2020, the parties conducted themselves consistent with this employment
24 contract for services in exchange for the commission pay mentioned above. This course of conduct
25 cemented the terms of the employment contract indelibly.

26 40. Pursuant to the employment contract, LabCorp encouraged RBDEs and RMBDs
27 including Plaintiffs, to sell as much as possible in order to exceed sales goals. Plaintiff Schott was told
28 that quota was bare minimum, which is just enough to remain employed. He was also told of "stretch"

1 goals, which meant he should far exceed goals to cover any potential losses during the year. Zac
2 Chambers, a manager in the National Sales Admin office, and Divisional senior leaders routinely
3 encouraged Plaintiffs and others to sell as much as possible. Even when quota had been exceeded by
4 almost 125% to 400%, LabCorp encouraged more sales. Plaintiff understood this to mean that there
5 was no limit to how much money they could earn from commissions.

6 41. The company has a "GEM Club" awards program for top sales personnel to receive
7 recognition for making big sales and earning large commissions, gifts and all expenses paid trips and
8 vacations. The GEM club announces top performers to all employees. The managers over RBDEs
9 and RMBDs often talked about "sky's the limit" when referring to commissions and the awards
10 program. Top performers received bonuses in addition to the commissions. Over the years, Plaintiff
11 Hull received countless awards including, Best of Class, Top Performers and GEM club, because she
12 exceeded sales goals.

13 42. The parties documented the compensation terms of their employment contract. On an
14 annual basis, LabCorp required Plaintiff Hull and other RBDEs to sign a document entitled "Incentive
15 Compensation Plan." The Plan describes the commission payments and method for calculating
16 commissions. LabCorp required Plaintiff Schott and other RMBDs to sign a document entitled
17 "Incentive Bonus Plan." The Plan describes the sales bonus and method for calculating incentive
18 compensation.

19 43. Plaintiffs believed the Plans were required to document the terms of their employment
20 contract for commission pay in exchange for services, and they believed it was part of that contract,
21 because the RBDE Plan document says:

22 **Plan Introduction**
23 **Plan Objectives**

24 The Regional Business Development Executive . . . Compensation Plan provides
25 incentive compensation for qualified individuals who produce new sales revenue in
26 prospective accounts.

27 The Plan describes the current parameters by which LabCorp commissions are paid to
28 RBDEs . . .

Commissions are paid on a monthly basis.

Plan Details
Sales Commission

1 **Retention Commission**

2 Once a Qualified Account has been fully approved, the account will Track for a period
3 of 12 months after the Credit Submission.

4 An RBDE-W will earn a Commission Rate of up to 7.0% of the Qualified Account's
5 New Sales Revenue

6 **Administrative Details**

7 11. The Plan memorializes a pay practice and policy of LabCorp. The Plan does not
8 create any contract or agreement between LabCorp and the RBDE nor does the
9 RBDE-W have any contractual rights under the Plan. RBDE-Ws are employed at-will
10 and either the RBDE-W or LabCorp may terminate the employment relationship at any
11 time. LabCorp reserves the sole right to amend, supersede or terminate the Plan, in
12 whole or in part, upon written notice to the affected RBDE-Ws. LabCorp has the sole
13 power to construe and interpret this Plan and to determine all questions that may arise
14 under this Plan. Such interpretations and determinations will be conclusive and binding
15 upon all parties including any RBDE-Ws affected by the plan.

16 This Plan may not be modified in any way without the express written approval of the
17 National Sales Administration in Burlington, NC.

18 12. No RBDE-W employee shall be eligible to receive incentive compensation under
19 this plan unless and until he/she executes and returns the attached 2017 Regional
20 Business Development Executive-W Compensation Plan Acknowledgment of
21 Understanding Form.

22 13. The Compensation Plan, all prior compensation plans and any amendments to this
23 Compensation Plan or prior compensation plans shall be construed in accordance with
24 the laws of the State of North Carolina, without reference to that jurisdiction's choice
25 of law provisions. (emphasis added)

26 15. The plan is effective January 1, 2017 and supersedes all other prior incentive
27 compensation plans for RBDE-Ws. All other prior incentive compensation plans are
28 hereby terminated and a RBDE-W shall not be entitled to any incentive compensation
29 payment under any prior incentive compensation plan. RBDE-Ws will be paid only
30 under this plan beginning with the January 2017 incentive payout.

31 The Regional Manager Business Development Commission Plan says:

32 **Plan Objectives**

33 The 2021 Commission plan was designed to support the following objectives:

- 34 - Motivate exceptional performance
35 - Align representative payouts with LabCorp's performance
36 - Simplify the incentive compensation process by which representatives are paid

37 **Plan Overview**

38 The incentive plan is a bonus based plan. Bonuses will be paid for attainment in excess
39 of established targets.

40 **Plan Details**
41 **Sales Bonus**

1 A Sales bonus will be calculated based on actual performance measured against targets
2 or goals.

3 **Payment Timing**

4 Incentive compensation, once earned, will be payable seventy-five - ninety (75-90)
5 days after the end of the tracking period. Because conditions may occur resulting in
6 delayed payment, the company reserves the right in its sole discretion to adjust the
7 payment schedule.

8 **Administrative Details**

9 14. The Plan memorializes a pay practice and policy of LabCorp. The Plan does not
10 create any contract or agreement between LabCorp and the employee nor does the
11 employee have any contractual rights under the Plan. Employees are employed at-will
12 and either the employee or LabCorp may terminate the employment relationship at any
13 time. LabCorp reserves the sole right to amend, supersede or terminate the Plan, in
14 whole or in part, upon written notice to the affected employees. LabCorp has the sole
15 power to construe and interpret this Plan and to determine all questions that may arise
16 under this Plan. Such interpretations and determinations will be conclusive and binding
17 upon all parties including any employees affected by the plan.

18 This Plan may not be modified in any way without the express written approval of the
19 National Sales Administration in Burlington, NC.

20 15. LabCorp reserves the right for management to review and amend quarterly and
21 annual targets to better align the sales targets to actual data. These adjustments are
22 meant to better align the business needs.

23 17. The Compensation Plan, all prior compensation plans and any amendments to this
24 Compensation Plan or prior compensation plans shall be construed in accordance with
25 the laws of the State of North Carolina, without reference to that jurisdiction's choice
26 of law provisions. (emphasis added)

27 18. No employee shall be eligible to receive incentive compensation under this plan
28 unless and until he/she executes and returns the attached 2021 Sales Incentive Bonus
Plan Acknowledgement of Understanding Form and addendum.

19 19. The plan is effective January 1, 2021 and supersedes all other prior incentive
20 compensation plans for EMPLOYEE-Ws. . . .

21 44. LabCorp intentionally drafted the Plan documents in a manner that was likely to lead
22 the RBDEs and RMBDs into thinking that it was part of the employment contract. LabCorp
23 intentionally mixed language about at-will status and continued employment to surround the language
24 that says the Plan does not create a contract in order to confuse RBDEs and RMBDs into thinking the
25 paragraph was there simply to say the Plan does not create a right of continued employment.

26 45. Plaintiffs understood the Plan to mean nothing more that the Plan did not guarantee
27 them a right to continued employment because it says "[RBDEs or employees] are employed at-will
28

1 and either the [RBDEs or employee] or LabCorp may terminate the employment relationship at any
2 time" right after stating that "The Plan does not create any contract or agreement between LabCorp
3 and the [RBDE or employee] nor does the [RBDE or employee] have any contractual rights under the
4 Plan" and right before stating that LabCorp reserves the right to amend, supersede or terminate the
5 Plan, in whole or in part, upon written notice to the affected RBDEs and RMBDs.

6 46. A contrary reading, that the Plan is not a contract and creates no contractual rights,
7 would be a surprise to Plaintiffs because the supposedly agreed upon terms of the bargain are not
8 represented in the form drafted by LabCorp. This interpretation is so harsh and one-sided that it would
9 shock the conscience and such an interpretation of the terms is not justified by the circumstances.

10 47. Plaintiffs have no legal training or experience with the law or contracts. They did not
11 draft the Plan and played no role in drafting it. LabCorp drafted the Plan without input from Plaintiffs.
12 LabCorp used the legal team, HR team, and sales administration team to draft the Plan. They knew
13 that RBDEs and RMBDs thought the Plan was a contract as mentioned in the paragraphs below.

14 48. Each year, LabCorp waited months after January 1st to send the Plan to Plaintiffs and
15 other RBDEs and RMBDs and insisted the RBDEs and RMBDs needed to sign and return the
16 documents in order to get paid for the commissions they had already earned on or after January 1st
17 that year. In other words, LabCorp told Plaintiffs that the Plan documents were retroactive to January
18 1st each year.

19 49. LabCorp intentionally timed the correspondence about the Plan and signing the
20 documents so that commissioned employees would rush to sign the documents believing the rush was
21 necessary in order to be paid for commissions already earned.

22 **The Employment Contract Remained In Full Force And Effect In 2020**

23 50. In 2020, Plaintiffs and LabCorp continued their conduct pursuant to the employment
24 contract for services in exchange for commission payments. Plaintiffs worked as RBDEs and RMBDs
25 and continued to secure new business and LabCorp continued to pay the 7% commission and quarterly
26 bonus.

27 51. In or about April 2020, LabCorp sent a Plan document for Plaintiffs to sign and said
28 that Plaintiff would not be paid for the commissions they had earned after January 1, 2020, unless and

1 until they signed and returned the Plan.

2 52. At the time LabCorp asked Plaintiffs to sign the Plan, based on all of the events
3 mentioned in paragraphs 10 through 34, it is clear that LabCorp knew that a signed contract was
4 required in order to pay RBDEs and RMBDs commissions as described in the Plan.

5 **COVID-19 Stay At Home Orders Caused Revenue To Drop**
6 **LabCorp Told Plaintiffs To Build A Book Of Business From COVID Testing**

7 53. On December 31, 2019, the World Health organization stated that a mysterious
8 pneumonia was sickening dozens of people in Wuhan, China.

9 54. On January 26, 2020, the Centers for Disease Control confirmed California's first case
10 of coronavirus in Orange County. The patient is a traveler from Wuhan, China.

11 55. On January 30, 2020, the World Health Organization declared a "public health
12 emergency of international concern."

13 56. On February 11, 2020, the World Health Organization formally renamed the novel
14 coronavirus COVID-19. "Co" stands for coronavirus, "Vi" is for virus and "D" is for disease.

15 57. On March 4, 2020, Governor Gavin Newsom declared a state of emergency in
16 California.

17 58. On March 5th, 2020, LabCorp announced that it was offering COVID PCR testing,
18 which was made available pursuant to guidance issued by the U.S. Food and Drug Administration and
19 the CDC.

20 59. Plaintiffs went to work immediately. They worked day and night to establish regional
21 PCR testing sites for the County of Riverside and Bearie Healthcare. This was a nightmare because
22 these entities were unsure about funding, requirements, staffing and other important issues. Plaintiffs
23 assisted with every aspect of setting up testing, from assigning account numbers to arranging for
24 delivery of supplies in the middle of the night and collecting payments, which as not normally a big
25 part of their jobs. The established new PCR testing accounts for clients like Corona Community
26 Health Center and Hemmet Community Health Center and Yucaipa Urgent Care as part of a corporate
27 sales strategy to prevent competitors like Quest and Eegis from signing up these new clients. Plaintiffs
28 also worked tirelessly to prevent existing clients from leaving LabCorp or using competitors for PCR

1 testing. But for the timely valiant efforts of Plaintiffs, LabCorp would have missed out on \$30 million
2 dollars in PCR testing revenue from Plaintiffs region.

3 60. On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019
4 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration
5 for all states, territories, and the District of Columbia.

6 61. On March 16, 2020, a shelter in place order was announced for six Bay Area counties.
7 A few days later, Gov. Gavin Newsom announced a statewide order to shelter at home, affecting 40
8 million Californians. The order restricted all non-essential travel and activities outside the home.

9 62. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act
10 - the sweeping economic relief package was signed into law.

11 63. On April 20, 2020, LabCorp announced that it was offering home testing for
12 COVID-19. Healthcare workers and first responders who had symptoms of COVID-19 could use a
13 LabCorp kit to self-test for the Coronavirus at home.

14 64. On April 28, 2020, LabCorp announced that a test that helps identify individuals who
15 have been exposed to the COVID-19 Coronavirus and that it was broadly available.

16 65. On or about May 11, 2020, President Trump announced that states would be receiving
17 \$11 billion in funds from the Coronavirus Aid, Relief and Economic Security Act to help meet testing
18 goals.

19 66. Routine Lab testing decreased substantially because of the shelter at home order. The
20 sales revenue in Plaintiff's territory decreased as a result.

21 67. LabCorp made a new test available just for COVID-19. The test was able to detect
22 genetic material of the virus using a lab technique called polymerase chain reaction (PCR). This test
23 fell into the category of assigned specialty codes and test categories such that it would be included in
24 sales compensation calculations.

25 68. Plaintiffs were introduced to this new potential revenue stream when Rajat Mehta, Sr.
26 Vice President for the West Division, said "let's turn this crisis into an opportunity."

27 69. LabCorp immediately inundated commissioned employees with training information
28 and documents, both internal and client facing. For example, the employees were required to read and

1 understand long medical studies about COVID. One such study was "SARS-CoV-2: virus dynamics
2 and host response" which was relatively long and complex. LabCorp wanted Plaintiffs to appear as
3 if they were subject matter experts when talking to clients about COVID so Plaintiffs had to spend a
4 lot of time learning in the middle of doing their work. Plaintiffs had to read and distribute handouts
5 and materials about COVID, Q&As about COVID and similar things.

6 70. Plaintiffs were required to read instructions about COVID specimen collection and
7 shipping, guides about those tests, service announcements, and Q&A materials. They had to know
8 more than average folks because LabCorp expected them to train clients about these matters. LabCorp
9 required Plaintiffs to complete "Brainsharks" training about these and other COVID matters.

10 71. Plaintiffs were instructed by their sales managers and upper-management to direct all
11 of their sales efforts towards informing their existing clients of the test, updating their lab Electronic
12 Ordering Systems with the COVID PCR test code for ease of ordering. Plaintiffs were tasked with
13 providing all needed supplies to the clients.

14 72. Plaintiffs set up dozens of new accounts, just for COVID testing (mainly County
15 accounts, Urgent Cares, etc.) and navigated through all the logistics associated with these new clients.
16 When a sales person sets up a new account for laboratory testing, the salesperson must provide a
17 "connectivity solutions." Clients almost always ask for an EMR connection to place electronic orders
18 and also receive lab results electronically (as opposed to mail or faxed results). Setting all of this up
19 with the various EMR vendors (eClinical Works, NextGen, Epic, Practice Fusion ... just to name a few
20 big ones) requires a lot of work by SMEs. Few clients decline an EMR solution, but they will at
21 minimum use a free, online portal called "Link", which will provide patient results via the web. This
22 is still a set-up that SMEs have to initiate and train the client to use and RMBDs oversaw this work.

23 73. Plaintiffs were required to provide all of their clients with training on COVID test
24 collection technique, storage, and causes for rejection.

25 74. During phone and WebEx team meetings, Plaintiffs were told that the core/base
26 business was down, and they needed to stay engaged with core business and try to sell them on
27 Telehealth, LabCorp at Home (ship the kit to patients' home for collection - no need to go to Dr.
28 office). Plaintiffs were also told that they need to go after new COVID business to sustain the

1 company while core business is down. Plaintiffs did as they were told and aggressively went after the
2 COVID business. Plaintiffs worked 10-12 hours per day, 6 days per week. The results were
3 phenomenal.

4 75. The requirement to learn more about COVID testing did not stop. In May 2020, Area
5 Director Ted Turnure told Plaintiffs and others to read and familiarize themselves with a new study
6 about serology testing and to "start pushing this with all clients" and Plaintiffs were required to make
7 notes about conversations with clients regarding the new study. This was for all clients. Both
8 Plaintiffs had a lot of clients so this was a lot of work.

9 76. Plaintiffs were required to do whatever it took to get new accounts. For example, in
10 June 2020, Todd Benatar, Vice President and General Manager of NorCal/LA, told a client of Plaintiff
11 HULL that she would make a long-distance drive to ensure they had testing supplies, which she did.

12 77. In or around June 2020, after Plaintiffs and other commission employees brought in
13 millions of dollars in business for LabCorp, the company suggested that it might not pay commissions
14 earned because they were too high. The employees complained about this. In response, LabCorp
15 schemed to commit fraud and theft by cheating Plaintiffs and other employees in California out of
16 commissions earned. Managing agents of LabCorp fraudulently and falsely told Plaintiffs in a memo
17 that LabCorp was not required by law to pay the commissions earned and still owing. In furtherance
18 of this fraudulent scheme, managing agent Mat Neighhoff (VP of National Sales Administration)
19 published a memo to ADBDs, ARMBDs, RMBDs and VPs stating that commissions would be paid
20 but only going forward, not retroactively. This memo shows that LabCorp knew of its legal obligation
21 to pay all commissions and an intent to deceive Plaintiffs and others into believing that LabCorp had
22 the right to unilaterally alter commission agreements after commissions had already been earned. The
23 memo shows an intent to deceive some California employee paid by commission because it was not
24 shared with all employees and LabCorp did not pay Plaintiff Hull and others like her any commissions
25 and capped Plaintiff Schott's commission bonus.

26 78. In June 2020, Todd Benatar, Vice President and General Manager of NorCal/LA, told
27 Plaintiffs to continue the efforts to grow COVID testing business and provided talking points for client
28 interaction when issues of delayed results arose. Plaintiffs were told to say things like "as we reopen,

1 and routine medical care is restored, we are seeing substantial increase in the demand for COVID
2 testing" and because of the demand, we are experiencing delays" and "LabCorp has aggressive plans
3 to deal with the demand and lagging delivery times" and "we promise to stay in close contact with you
4 during the process."

5 79. In July 2020, VP Mehta repeated his mantra and told Plaintiff and others "let's . . .
6 continue to turn crisis into an opportunity." This was in the context of telling Plaintiffs what to say
7 to customers about delayed testing results.

8 80. In July 2020, Rajat Mehta, Sr. Vice President for West Division, reminded Plaintiffs
9 and others to tell clients that Quest Diagnostics was experiencing delays in test results and that
10 LabCorp was doing better than Quest.

11 81. For Plaintiffs, this was a very stressful and turbulent time. They were inundated with
12 phone calls, questions, supply shortages, turn around time issues, and more. They worked 12 hours
13 per day for several months in a row. They were exhausted, but continued to get up and go at it day
14 after day.

15 **LabCorp Price Gouged The Government And Insurance Companies**
16 **When Billing For COVID PCR Testing And Made Billions In Profit**

17 82. The CARES Act (Sec. 3201) clarifies a requirement enacted in the Families First
18 Coronavirus Response Act, passed a week earlier, that commercial health insurance plans, including
19 out of network payors, must cover COVID-19 testing without imposing any cost-sharing on enrollees.
20 This allowed LabCorp to bill the government more than \$51 and insurance companies \$100 or more
21 per PCR test when the normal fee for each test would have been less than \$10.

22 83. LabCorp bragged, repeatedly, week after week, about the record- breaking revenues
23 that were being collected, particularly in the West Division.

24 **Despite Being Flush With Cash, LabCorp Refused to Pay**
25 **The 7% Commission and Bonus Because It Was Just Too Much Money**

26 84. In June or July 2020, LabCorp verbally told commissioned employees that it was
27 unilaterally changing the terms of employment contracts for commissions in exchange for sales
28 services. The company announced that it would not pay any commissions for PCR revenue. The

1 company claimed it was making a change to the Plan in order to make it more flexible because PCR
2 revenue was too high. The changes were made retroactive.

3 85. LabCorp said that it would exclude PCR revenue from sales compensation calculations.
4 The change eliminated all commissions for PCR revenue.

5 86. LabCorp's decision to exclude PCR revenue from the sales compensation calculations
6 was unlawful and a violation of Labor Code §§ 226 and 2810.05. The commission reports and pay
7 stubs that Plaintiffs received after the change were all inaccurate. LabCorp did not provide Plaintiffs
8 with a required notice of a pay change.

9 87. LabCorp did not obtain anything in writing from Plaintiffs or other commissioned
10 employees regarding the proposed change to the employment agreement that promised commission
11 payments in exchange for sales services.

12 88. LabCorp did not pay Plaintiff Hull and others the commissions earned from PCR
13 revenue. LabCorp unilaterally capped Plaintiff Schott's commission at 120% of goal even though he
14 achieved 354% in one quarter. Plaintiffs should have been paid the full commissions earned on PCR
15 revenue.

16 89. LabCorp did not eliminate any other form of revenue from the compensation
17 calculations under the Plan.

18 90. Plaintiffs and the sales staff were shocked and outraged. They never imagined that
19 LabCorp would refuse to pay commission from the work they did to sell the Covid PCR tests. They
20 never imagined that LabCorp would change the commission agreement without their signatures.

21 91. Plaintiffs felt like this was a big slap in the face when LabCorp manipulated the
22 revenue reports by removing the PCR revenue from their commission reports. They had worked 12
23 hours per day for several months in a row and were exhausted from selling COVID tests and growing
24 that business.

25 92. The backlash from the entire sales team was instant. Managers became concerned
26 because sales staff felt betrayed, the change would lead to a sense that Lab Corp management lost its
27 integrity, the change seemed to undermine LabCorp's promise, and the change was unethical. As a
28 result, managers told Plaintiffs and others that there would be awards because they went above and

1 beyond in COVID sales. The managers called the payouts bonuses and the terms were extremely
2 vague. Plaintiff HULL's boss just kept telling her to keep working hard and that she would be paid
3 commissions as promised.

4 **LabCorp Engaged In Fraud To Cheat Plaintiffs**
5 **And Acted With Conscious Disregard For Plaintiffs' Rights**

6 93. Before LabCorp unilaterally changed the terms of employment contract for
7 commissions in exchange for sales services, and before the company fraudulently excluded PCR
8 revenue from commission reports, the company, sales staff were unable to access sales and revenue
9 data. Commissioned employees asked the National Sales Admin office to explain. On July 2, 2020,
10 Ken Younts, the Vice President of Strategic Initiatives and Sales Operations, and Matt Neighoff, the
11 Vice President of National Administration & Sales Training sent an email to the senior sales
12 leadership stating that the preliminary commission reports for May 2020 would continue to be delayed
13 and falsely claimed that LabCorp had "encountered issues with the data concerning COVID testing
14 from various accounts" and said "a t this time we do not have an ETA on the reports" and LabCorp
15 would "provide additional information as soon as it is available." Zac Chambers, a manager in the
16 National Sales Admin office, sent the email to all sales staff. VP Younts, VP Neighoff and Manager
17 Chambers knew these statements were false when they made them. They knew there were no issues
18 with COVID data testing that prevented LabCorp from providing Plaintiffs and the others with
19 COVID sales data, and that the company would not be providing additional information because
20 LabCorp was conjuring a plan to cheat the sales staff out of COVID testing commissions.

21 94. After LabCorp unilaterally changed the terms of employment contract for commissions
22 in exchange for sales services, and after the company fraudulently excluded PCR revenue from
23 commission reports, the company engaged with the sales staff during a conference call.

24 95. During the conference call, questions arose. The first was about hiding the PCR
25 revenue data so that commissioned employees could not calculate what was owed. The second was
26 about whether LabCorp could lawfully change the terms of employment contract for commissions in
27 exchange for sales services without a signature from commissioned employees.

28 96. An email response dated July 24, 2020, from a regional manager summarized

1 LabCorp's responses to the questions, two of them were shocking:

2 1. When Callidus reports come out, can reps get two versions? One
3 including [revenue for] COVID and one excluding [revenue for] COVID PCR testing?

4 **We are not planning on creating a version including [revenue for] PCR testing.**
5 **If we did, it would probably cause a bunch of headaches for you all as some reps**
6 **would go straight to the commission calculators and find out what that payment**
7 **would have looked like. I'm sure that some reps have already done this using their**
8 **APR/ACA reports but, in conflict with our goal of being as transparent as possible,**
9 **this is probably one of those aspects that limited transparency is the best method.**

10 2. When will the final comp documents go out to the teams and **will there**
11 **be a signature process?**

12 **Legal is currently reviewing what we should do for this situation but it wouldn't**
13 **surprise us if they come back and say that the memo suffices as communication of the**
14 **plan change. There is language in the compensation plans that essentially state**
15 **that LabCorp reserves the right to review and change the plan if something**
16 **unforeseeable happens and disrupts the harmony and intent of the compensation**
17 **plan. If new plans do need to be created and signed we will initiate that**
18 **communication with everyone. . . . (emphasis added)**

19 97. The email above falsely suggested that LabCorp would provide more information from
20 legal about whether a signed agreement was needed. The regional manager knew at the time that
21 LabCorp would not be providing any more information.

22 98. The email above shows that LabCorp consciously withheld key information about sales
23 and revenue from sales staff and this was done to prevent them from calculating their commissions.
24 The email shows that LabCorp knew it had an ethical obligation to be transparent with sales and
25 revenue data, but it did not want sales staff using the revenue reports to calculate the commissions
26 owed.

27 99. The email shows that LabCorp knew that its actions were unlawful because it was
28 making changes to the terms of employment contract for commissions in exchange for sales services
without anything signed by the commissioned employees. LabCorp knew that LabCorp's decision to
exclude PCR revenue from the sales compensation calculations was unlawful and a violation of Labor
Code §§ 226 and 2810.05. LabCorp knew that the commission reports and pay stubs that Plaintiffs
received after the change were all inaccurate. LabCorp knew that it was supposed to Plaintiffs with
a required notice of a pay change, because LabCorp had done this in the past. There would be no
reason to ask "legal" what should be done about signatures if this was not the case.

1 100. The email shows that "legal" actually researched the issue of whether a signature was
2 required to change a commission plan.

3 101. A legal professional at LabCorp or an outside law firm, more likely than not, entered
4 the words "does an employer adjustment to commission need to be signed" into the Lexis research
5 databases focused on California statutes. Labor Code section 2751 appears as the number 2 search
6 result with these word being in plain view with the heading in bold blue letters:

7 2. § 2751. Contract involving commissions; Duties of employer; Terms of expired
8 contract

9 CA - Deering's California Codes Annotated Cal Lab Code § 2751

10 LABOR CODE > Division 3. Employment Relations > Chapter 2. Employer and
Employee > Article 1. The Contract of Employment

11 ... subd (a) by substituting (a) "By January 1, 2013, whenever an employer" for
12 "Whenever any employer who has no permanent and fixed place of business in this ...
... (4) added "has the meaning set forth in Section 204.1. 'Commissions ' " in subd (c).
2012 Amendment: (1) Deleted "By January ...

13 ... subd (c) which read: "(c) As used in this section, 'commissions' has the meaning set
14 forth in Section 204.1. 'Commissions ' does not include short-term productivity
bonuses such as are paid ...

15 ... and profit-sharing plans, unless there has been an offer by the employer to pay a
fixed percentage of sales or profits as compensation ...

16 ... Whenever an employer enters into a contract of employment with an employee for
services ...

17 ... state and the contemplated method of payment of the employee involves
commissions, the contract shall be in writing and shall set forth the method by which
the commissions shall be computed and paid. (b) The employer shall give a signed
18 copy of the contract to every employee who is a party thereto and shall obtain a signed
receipt for the contract from each employee. In the case of ...

19 ... terminated by either party. (c) As used in this section, "commissions" has the
20 meaning set forth in ... (emphasis added)

21 102. A legal professional at LabCorp or an outside law firm, more likely than not, clicked
22 on Section 2751 and read subsection (b) that says changes to commission pay must be signed by the
23 employee.

24 103. A legal professional at LabCorp or an outside law firm, more likely than not, entered
25 the words "labor code section 2751" into the Lexis research national cases database, the first case that
26 pops up is Swafford v. IBM, 408 F. Supp. 3d 1131, 1134 (N.D. Cal. 2019). The legal professional,
27 more likely than not, "Shepardized" the Swafford case, and it would have led that person to the
28 decision in Beard v. IBM, No. C 18-06783 WHA, 2020 U.S. Dist. LEXIS 62796, at *19 (N.D. Cal.

1 Apr. 9, 2020). Both cases clearly explain the problem with not having a signed contract for
2 commissioned employees. They explain why reliance on cases decided in favor of IBM is not a good
3 idea.

4 104. A legal professional at LabCorp or an outside law firm, more likely than not, advised
5 managing agents of LabCorp, including Chief Legal Officer Sandra van der Vaart that a signed
6 contract was required for commissioned employees and any changes must be signed by the employee.

7 105. Despite all of this, LabCorp lied and told Plaintiffs and other sales staff that LabCorp
8 could lawfully change the commission without a signature of the employee. LabCorp intentionally
9 told the sales staff that "legal" was involved to make it seem like the change was in fact legal, when
10 it was not and LabCorp knew this.

11 106. Chief Legal Officer Sandra van der Vaart, more likely than not, made a decision to hide
12 the California signature requirement from commissioned employees because LabCorp did not want
13 sales staff asking questions about why California sales representatives had signed agreements and
14 others outside California did not. van der Vaart did not want to alert the California sales staff about
15 their rights under Labor Code section 2751 so LabCorp lied. Without the lie, Plaintiffs would have
16 been paid commissions for PCR revenue.

17 107. LabCorp could have easily avoided this lawsuit by complying with the law and giving
18 Plaintiffs a signed commission agreement and making changes to that agreement only after Plaintiffs
19 signed the amendments. LabCorp chose the unlawful path instead.

20 ADMINISTRATIVE EXHAUSTION

21 108. Plaintiffs notified the California Labor and Workforce Development Agency
22 ("LWDA") regarding violations of the Labor Code. Therefore, Plaintiffs exhausted their
23 administrative remedies.

24 DAMAGES/PUNITIVE DAMAGES

25 109. As a proximate result of the Defendants' acts, Plaintiffs suffered and continue to suffer
26 substantial economic losses and interest thereon.

27 110. Managing agents, officers or directors engaged in the acts and/or failed to do the acts
28 alleged herein above. As a result, the Defendants, and each of them, engaged in fraudulent acts and

1 conduct with malice towards Plaintiffs and/or a reckless indifference to statutorily protected rights and
2 in conscious disregard of the rights, both statutory and common law, guaranteed Plaintiffs by the State
3 of California. As such, Defendants are guilty of oppression and malice for which Plaintiffs are entitled
4 to punitive damages, in an amount to be proven at trial. Pursuant to law, the jury will be allowed to
5 award up to nine or ten times the underlying damages award, if any.

6 **ATTORNEY'S FEES**

7 111. Code of Civil Procedure §1021 provides that attorneys' fees are recoverable in an action
8 for which they are specifically provided by statute. Labor Code § Labor Code §2699(g)(1) provides
9 that reasonable attorneys' fees and costs are recoverable herein, within the discretion of the court.
10 Plaintiffs retained attorneys for the prosecution of this action. As a result, Plaintiffs are entitled to
11 reasonable attorneys' fees and costs herein incurred. Plaintiff will amend to invoke this provision.

12 **FIRST CAUSE OF ACTION**
13 **(Violation of the California Unfair Competition Law)**

14 112. The allegations of paragraphs 1 through 110 are re-alleged and incorporated herein by
15 reference.

16 113. Defendant is a "person" as defined under California Business & Professions Code
17 Section 17021.

18 114. California Business and Professions Code § 17200 prohibits any "unlawful, unfair, or
19 fraudulent business act or practices." LabCorp has engaged in unlawful, fraudulent, and unfair
20 business acts and practices in violation of the UCL.

21 115. LabCorp's conduct, as described herein, was and is in violation of the UCL. LabCorp's
22 conduct violates the UCL in at least the following ways:

23 (A) By knowingly misrepresenting to Plaintiff that LabCorp would pay commission
24 for sales revenue, including PCR revenue

25 (B) By willfully failing to pay all earned commissions wages to Plaintiffs in
26 violation of Labor Code 201, 202, and 204., and

27 (C) By failing to provide accurate wage statements as required by Labor Code §§
28 226 and 2810.05.

1 (D) By including a North Carolina choice of law clause in the Plan that denied
2 Plaintiffs the substantive protection of California law with respect to a controversy arising in
3 California in violation of Labor Code 925(a)(2).

4 (E) By including in the Plan a provision that permits LabCorp to frustrate the
5 legitimate expectations of its employees, where, according to Defendant, it retains sole discretion to
6 pay commissions or not.

7 116. Where an employer's policy or practice is forbidden by or found to violate the Labor
8 Code, it may also be held to constitute an unlawful business practice subject to redress under
9 California Business and Professions Code § 17200.

10 117. Furthermore, any failure to pay wages is, by definition, an unfair business practice
11 under Section 17200.

12 118. A practice could violate Section 17200 even if not specifically proscribed by some
13 other law. To determine if a specific practice is proscribed in the absence of an express statutory
14 directive, the Court is instructed to draw on its equitable powers. The discretion to pay commission
15 or not provision is, in effect, an escape clause which Defendant may invoke to avoid the obligations
16 it voluntarily incurred through the Plan. The clause may be invoked, moreover, after Defendant has
17 received the benefit of the Plan in the form of successful sales of lab services which, absent the
18 forfeiture provision, would lead to the payment of commissions under the Plan. Because the forfeiture
19 provision permits Defendant to retain monies earned by its employees, it may be deemed an unfair
20 practice under § 17200.

21 119. Accordingly, Plaintiffs suffered injuries in fact including lost money as a result of
22 Defendants' misrepresentations.

23 120. LabCorp's misrepresentations alleged herein caused Plaintiffs to sell as many of
24 LabCorp's products and services as they could, often at the expense of quality time with family that
25 would not otherwise have been sacrificed had Plaintiffs known that LabCorp would not pay them the
26 commissions he earned.

27 121. As alleged above, Labor Code Section 2751 states, in pertinent part: "Whenever an
28 employer enters into a contract of employment with an employee for services to be rendered within

1 this state and the contemplated method of payment of the employee involves commissions, the
2 contract shall be in writing and set forth the method by which the commissions shall be paid." The
3 statute also provides that an employer must give a "signed" copy of the contract to the employee and
4 obtain a receipt for the contract from the employee. The statute also provides that the contract terms
5 are presumed to remain in full force and effect until the contract is superseded or employment is
6 terminated.

7 122. Any claim by LabCorp that the Plan is not a contract, would be an admitted violation
8 of Section 2751. If LabCorp admits that the Plan is a contract, the lack of a contract would not be a
9 sufficient basis for violation of the UCL, although violations of other parts of Section 2751 may be
10 a sufficient basis.

11 123. A violation of section 2751, even if it cannot support a standalone claim, can serve as
12 a predicate violation for a claim under the UCL. Plaintiff alleges a claim against LabCorp for violation
13 of the UCL for its unlawful conduct in violating the provision of section 2751, as outlined above.

14 124. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by
15 Defendant under Cal. Bus. & Prof. Code § 17200 et seq.

16 125. Plaintiff requests that this Court enter such orders or judgments as may be necessary
17 to enjoin LabCorp from continuing its unfair, unlawful, and/or deceptive practices and to restore to
18 Plaintiff any money it acquired by unfair competition, including restitution and/or restitutionary
19 disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and
20 for such other relief set forth below, including, but not limited to Plaintiff's attorneys' fees.

21 **SECOND CAUSE OF ACTION**
22 **(Breach of Contract Required By Law)**

23 126. The allegations of paragraphs 1 through 124 are re-alleged and incorporated herein by
24 reference.

25 127. The contract for services with Plaintiffs was required by law pursuant to Labor Code
26 section 2751, which provides that:

27 (a) Whenever an employer enters into a contract of employment with an employee for
28 services to be rendered within this state and the contemplated method of payment of
the employee involves commissions, the contract shall be in writing and shall set forth
the method by which the commissions shall be computed and paid.

1 (b) The employer shall give a signed copy of the contract to every employee who is a
2 party thereto and shall obtain a signed receipt for the contract from each employee. In
3 the case of a contract that expires and where the parties nevertheless continue to work
4 under the terms of the expired contract, the contract terms are presumed to remain in
5 full force and effect until the contract is superseded or employment is terminated by
6 either party.

7 (c) As used in this section, "commissions" has the meaning set forth in Section 204.1.

8 128. LabCorp is an employer, and Plaintiffs are employees within the meaning of Section
9 2571. The company entered a contract of employment with Plaintiffs for services to be rendered
10 within this state and the contemplated method of payment of Plaintiffs involved commissions.

11 129. Plaintiffs agreed to provide sales services to promote LabCorp's goods and services.
12 LabCorp promised to pay Plaintiffs a commission or commission bonus for sales revenue as
13 mentioned above.

14 130. The contract for services with Plaintiffs was in writing and set forth the method by
15 which the commissions shall be computed and paid. However, LabCorp told Plaintiffs the writing is
16 not a contract and, in fact, repudiated the contract even though it was required by law.

17 131. LabCorp did not give Plaintiff a signed copy of the contract, nor did it obtain a signed
18 receipt for the contract from Plaintiffs. The terms of the contract remained in full force and effect
19 because the contract was not superseded nor was Plaintiffs' employment terminated.

20 132. If LabCorp's claim, that the writing is not a contract, is true and correct, this conduct
21 by LabCorp violated Labor Code section 2751.

22 133. California courts have protected salespeople and routinely hold that if the employee
23 is the procuring cause of the sale, he or she is entitled to the commissions. The term, "He who shakes
24 the tree is the one entitled to gather the fruit" is used to describe the concept.

25 134. LabCorp entered a contract of employment with Plaintiffs for services to be rendered
26 within this state and the contemplated method of payment of Plaintiffs involved commissions.

27 135. Plaintiffs agreed to provide sales services to promote LabCorp's goods and services.
28 LabCorp promised to pay a 7% commission for sales revenue or bonus as mentioned above. Sales
revenue included PCR revenue.

136. The parties intended to form a contract and they performed their promises according
to these terms.

1 137. The parties documented the method for determining how the commission would be
2 calculated in the Plan as described above.

3 138. The terms of the contract remain in full force and effect as there has been no meeting
4 of the minds or agreement about any changes to the contract.

5 139. In July 2020, LabCorp breached the agreement by refusing to pay commission on PCR
6 revenue because it was just too much money.

7 140. LabCorp unilaterally changed the terms of employment contract for commissions in
8 exchange for sales services. The company announced that it would not pay any commissions for PCR
9 revenue. The company claimed it was making changes to the Plan in order to make it more flexible
10 because PCR revenue was too high. The changes were made retroactive. LabCorp said that it would
11 continue to exclude PC revenue from sales compensation calculations. The changes were effective
12 as to revenue generated in May 2020 and anytime after, so that no commissions would be paid in July
13 2020 based on the May revenue. The change eliminated all commissions for PCR revenue.

14 141. LabCorp did not obtain anything in writing from Plaintiffs or other commissioned
15 employees regarding the proposed change to the employment agreement that promised commission
16 payments in exchange for sales services.

17 142. LabCorp did not pay Plaintiffs in July 2020 for the commissions earned from PCR
18 revenue in May 2020. Plaintiffs have never been paid the commissions earned on PCR revenue.

19 143. LabCorp did not eliminate any other form of revenue from the compensation
20 calculations under the Plan. The company announced that it was unilaterally changing the way
21 commissions were to be calculated retroactively.

22 144. As a matter of law, and pursuant to Labor Code 2751, LabCorp's attempt to change the
23 terms of the employment contract for commissions in exchange for sales services was ineffective
24 without something signed by Plaintiffs and against public policy.

25 145. LabCorp's conduct at the time of the breach was fraudulent. LabCorp consciously
26 withheld key information about sales and revenue from sales staff and this was done to prevent them
27 from calculating their commissions. LabCorp knew it had an ethical obligation to be transparent, but
28 it did not want sales staff using the revenue reports to calculate the commissions owed.

1 146. LabCorp knew that its actions - trying to change the contract without signatures - were
2 probably unlawful. There would be no reason to ask "legal" what should be done about signatures if
3 this was not the case.

4 147. LabCorp actually researched the issue of whether a signature was required to change
5 a commission plan, read Section 275 and read subsection (b) that says changes to commission pay
6 must be signed by the employee, and read cases that clearly explained the problem with not having
7 a signed contract for commissioned employees. They explained why reliance on cases decided in
8 favor of IBM was not a good idea. Chief Legal Officer Sandra van der Vaart knew that a signed
9 contract was required for commissioned employees and any changes must be signed by the employee.

10 148. Despite all of this, LabCorp lied and told Plaintiffs and other sales staff that LabCorp
11 could lawfully change the commission without a signature of the employee. LabCorp intentionally
12 told the sales staff that "legal" was involved to make it seem like the change was in fact legal, when
13 it was not and LabCorp knew this.

14 149. Chief Legal Officer Sandra van der Vaart, more likely than not, made a decision to hide
15 the California signature requirement because LabCorp did not want sales staff asking questions about
16 why California sales representatives had signed agreements and others outside California did not. van
17 der Vaart did not want to alert the California sales staff about their rights under Labor Code section
18 2751 so LabCorp lied. Without the lie, Plaintiffs would have been paid commissions for PCR
19 revenue.

20 150. To the extent any part of the contract is against public policy, or unconscionable, the
21 court should sever those parts from the agreement. These matters are disputed questions of fact and
22 law. For example, whether the parties intended to be bound on any terms, some terms or all terms will
23 require the court to rule on whether such intent was lawful in the first place in light of Section 2751.
24 The unfair terms of an adhesion contract should not be enforced, but the remainder of the contract can
25 be enforced. Then, the issue turns to whether LabCorp's subsequent conduct justifies a finding of
26 intent to be bound.

27 151. In doing the acts and/or failing to do the acts alleged herein above, the Defendants, and
28 each of them, engaged in fraudulent acts and conduct with malice towards Plaintiffs and/or a reckless

1 indifference to statutorily protected rights and in conscious disregard of the rights, both statutory and
2 common law, guaranteed Plaintiffs by the State of California. As such, Defendants are guilty of
3 oppression and malice for which Plaintiffs are entitled to punitive damages, in an amount to be proven
4 at trial.

5 152. Code of Civil Procedure §1021 provides that attorneys' fees are recoverable in an action
6 for which they are specifically provided by statute. Labor Code §2699 provides that, in addition to
7 penalties, reasonable attorneys' fees and costs are recoverable herein by the prevailing party, within
8 the discretion of the Court. Plaintiffs retained an attorney for the prosecution of this action. As a
9 result, Plaintiffs are entitled to reasonable attorneys' fees and costs herein incurred. Plaintiff will
10 amend to invoke this provision.

11 **THIRD CAUSE OF ACTION**
12 **(Breach of Covenant of Good Faith and Fair Dealing)**

13 153. The allegations of paragraphs 1 through 152 are re-alleged and incorporated herein by
14 reference.

15 154. The law is clear; every employment contract contains an implied-in-law covenant of
16 good faith and fair dealing. The covenant serves to guarantee that neither party will do anything to
17 frustrate the right of the other to receive the benefits of the agreement. And where a contract confers
18 one party with discretionary power affecting the rights of the other, a duty is imposed to exercise that
19 discretion in good faith and in accordance with fair dealing. If one party exercises its discretionary
20 authority in bad faith for the purpose of frustrating the other party's legitimate expectations, it has
21 breached the implied covenant. Reasonable notice is part of fairness.

22 155. LabCorp's decision to exclude PCR revenue from the sales compensation calculations
23 was a unilateral decision that took effect immediately, and without a reasonable amount of time and
24 no effort to ensure that commissions that had already been earned were paid to Plaintiffs.

25 156. Plaintiffs and LabCorp entered into an employment relationship.

26 157. Plaintiffs substantially performed their sales duties.

27 158. LabCorp engaged in conduct that prevented Plaintiffs from receiving the benefits that
28 they were entitled to have received under the contract.

1 159. LabCorp did not act fairly and in good faith.

2 160. Plaintiffs were harmed by LabCorp's failure to act fairly and in good faith.

3 **FOURTH CAUSE OF ACTION**
4 **(Fraudulent Misrepresentation)**

5 161. The allegations of paragraphs 1 through 160 are re-alleged and incorporated herein by
6 reference.

7 162. LabCorp, through its agents, represented to Plaintiffs that they would be paid
8 commission for all lab testing revenue including PCR revenue. Plaintiffs were told, by company
9 executives, that they would be paid commissions for selling these services. LabCorp promised to pay,
10 and actually paid, Plaintiffs a 7% growth commission on all revenue in excess of 100% of the 6-month
11 rolling baseline. LabCorp and Plaintiffs used company databases and records of sales and revenue to
12 calculate the commissions due Plaintiff. LabCorp made all of this information available to Plaintiff
13 without limitation. This conduct by LabCorp and Plaintiffs shows an agreement or understanding that
14 created an obligation for LabCorp to pay Plaintiffs and other commissioned employees the
15 commissions owed.

16 163. Between 2016 and 2019, the parties conducted themselves consistent with this
17 employment contract for services in exchange for the commission pay mentioned above.

18 164. Pursuant to the employment contract, LabCorp encouraged commissioned employees,
19 including Plaintiffs, to sell as much as possible in order to exceed sales goals. The company has a
20 "GEM Club" awards program for top sales personnel to receive recognition for making big sales and
21 earning large commissions, gifts and all expenses paid trips and vacations. The GEM club announces
22 top performers to all employees. The managers over commissioned employees often talked about
23 "sky's the limit" when referring to commissions and the awards program. Top performers received
24 bonuses in addition to the commissions. Plaintiff Hull was a top performer who exceed sales goals.

25 165. The parties documented the compensation terms of their employment contract. On an
26 annual basis, LabCorp required Plaintiffs and other commissioned employees to sign a document
27 entitled "Compensation Plan."

28 ///

1 166. The Plan for Plaintiff Hull describes the commission payments and method for
2 calculating commissions. The Plan document says a 7% commission will be paid on all Sales Comp
3 Revenue in excess of 100.0% of the 6-Month Rolling Baseline, and that revenue will be from assigned
4 specialty codes and test categories, which included COVID PCR testing.

5 167. The Plan for Plaintiff Schott describes the bonus commission he was to be paid
6 quarterly.

7 168. In March 2020, Plaintiffs were told this PCR test was a new potential revenue stream.
8 They were immediately inundated with training information and documents, both internal and client
9 facing.

10 169. Plaintiffs were instructed by their superiors including the Area Director, Ted Turnure,
11 and General Manager Todd Benatar, to direct all of their sales efforts towards growing LabCorp's
12 COVID testing business.

13 170. Plaintiffs were also told that they need to go after new COVID business to sustain the
14 company while core business is down. Plaintiffs did as they were told and aggressively went after the
15 COVID business. The results were phenomenal.

16 171. LabCorp sat back and allowed Plaintiffs work above and beyond the norm. The result
17 of this was big profit for LabCorp - billions of dollars from gouging the government and insurance
18 companies. The company repeatedly bragged about how they were making record profits because of
19 COVID testing and could have easily paid Plaintiffs pursuant to their Plans.

20 172. In the midst of all of these communications, company executives told Plaintiffs and led
21 them to believe that they would be paid commissions for PCR revenue if they built up the business.

22 173. Those representations were false.

23 174. Those representations were false when made and LabCorp, through its agents, knew
24 that they were false when made. LabCorp intended to deceive Plaintiffs in making those
25 misrepresentations. Simply put, LabCorp knew that it might not pay Plaintiff the commissions, even
26 though it told Plaintiffs in all of these instances that they would be paid.

27 175. Plaintiffs reasonably and justifiably relied on the representations of LabCorp. Notably,
28 the representations were made at the same time Plaintiffs received written confirmation that their

1 employment agreement for sales services in exchange for commissions was continuing on the same
2 terms. Plaintiffs reasonably and justifiably relied on the representations by, among other things,
3 continuing to work hard and sell as much product and services as possible for the benefit of LabCorp.

4 176. Had Plaintiffs known that he would not be paid what was promised and what was
5 expected, they would have worked differently at LabCorp, in commensuration with actual
6 compensation, and/or could have sought another job that paid what such efforts were worth and/or
7 did not refuse to pay commissions.

8 177. Had Plaintiffs known that they would not be paid for PCR revenue, they would have
9 worked differently at LabCorp so as to maximize their compensation.

10 178. LabCorp unilaterally changed the terms of employment contract for commissions in
11 exchange for sales services. The company announced that it would not pay any commissions for PCR
12 revenue. The company claimed it was making a change to the Plan in order to make it more flexible
13 because PCR revenue was too high. The changes were made retroactive. LabCorp said that it would
14 exclude PCR revenue from sales compensation calculations. The changes were effective retroactively
15 as to revenue that had already been generated so that no commissions would be paid for work that had
16 already be provided by Plaintiffs.

17 179. Before Labcorp unilaterally changed the terms of employment contract for
18 commissions in exchange for sales services, and before the company fraudulently excluded PCR
19 revenue from commission reports, the company, sales staff were unable to access sales and revenue
20 data. commissioned employees asked the National Sales Admin office to explain. On July 2, 2020,
21 Ken Younts, the Vice President of Strategic Initiatives and Sales Operations, and Matt Neighoff, the
22 Vice President of National Administration & Sales Training sent an email to the senior sales
23 leadership stating that the preliminary commission reports for May 2020 would continue to be delayed
24 and falsely claimed that LabCorp had "encountered issues with the data concerning COVID testing
25 from various accounts" and said "a t this time we do not have an ETA on the reports" and LabCorp
26 would "provide additional information as soon as it is available." Zac Chambers, a manager in the
27 National Sales Admin office, sent the email to all sales staff. VP Younts, VP Neighoff and Manager
28 Chambers knew these statements were false when they made them. They knew there were no issues

1 with COVID data testing that prevented LabCorp from providing Plaintiffs and the others with
2 COVID sales data, and that the company would not be providing additional information because
3 LabCorp was conjuring a plan to cheat the sales staff out of COVID testing commissions

4 180. After Labcorp unilaterally changed the terms of employment contract for commissions
5 in exchange for sales services on July 17, 2020, the company consciously withheld key information
6 about sales and revenue from sales staff and this was done to prevent them from calculating their
7 commissions. LabCorp knew it had an ethical obligation to be transparent, but it did not want sales
8 staff using the revenue reports to calculate the commissions owed.

9 181. After LabCorp unilaterally changed the terms of employment contract for commissions
10 in exchange for sales services, and after the company fraudulently excluded PCR revenue from
11 commission reports, the company engaged with the sales staff during a conference call.

12 182. During the conference call, questions arose. The first was about hiding the PCR
13 revenue data so that commissioned employees could not calculate what was owed. The second was
14 about whether LabCorp could lawfully change the terms of employment contract for commissions in
15 exchange for sales services without a signature from commissioned employees.

16 183. An email response dated July 24, 2020, from a regional manager summarized
17 LabCorp's responses to the questions, two of them were shocking:

18 1. *When Callidus reports come out, can reps get two versions? One including*
19 *[revenue for] COVID and one excluding [revenue for] COVID PCR testing?*

20 We are not planning on creating a version including [revenue for] PCR testing. If we
21 did, it would probably cause a bunch of headaches for you all as some reps would go
22 straight to the commission calculators and find out what that payment would have
23 looked like. I'm sure that some reps have already done this using their APR/ACA
24 reports but, in conflict with our goal of being as transparent as possible, this is
25 probably one of those aspects that limited transparency is the best method.

26 2. *When will the final comp documents go out to the teams and will there be a*
27 *signature process?*

28 Legal is currently reviewing what we should do for this situation but it wouldn't
surprise us if they come back and say that the memo suffices as communication of the
plan change. There is language in the compensation plans that essentially state that
LabCorp reserves the right to review and change the plan if something unforeseeable
happens and disrupts the harmony and intent of the compensation plan. If new plans
do need to be created and signed we will initiate that communication with everyone.
... (emphasis added)

1 184. The email above falsely suggested that LabCorp would provide more information from
2 legal about whether a signed agreement was needed. The regional manager knew at the time that
3 LabCorp would not be providing any more information.

4 185. The email above shows that LabCorp consciously withheld key information about sales
5 and revenue from sales staff and this was done to prevent them from calculating their commissions.
6 The email shows that LabCorp knew it had an ethical obligation to be transparent with sales and
7 revenue data, but it did not want sales staff using the revenue reports to calculate the commissions
8 owed.

9 186. The email shows that LabCorp knew that its actions were unlawful because it was
10 making changes to the terms of employment contract for commissions in exchange for sales services
11 without anything signed by the commissioned employees. LabCorp knew that LabCorp's decision to
12 exclude PCR revenue from the sales compensation calculations was unlawful and a violation of Labor
13 Code §§ 201, 202, 204, 226 and 2910.05. LabCorp knew that the commission reports and pay stubs
14 that Plaintiffs received after the change were all inaccurate. LabCorp knew that it was supposed to
15 Plaintiffs with a required notice of a pay change, because LabCorp had done this in the past. There
16 would be no reason to ask "legal" what should be done about signatures if this was not the case.

17 187. LabCorp knew that its actions - trying to change the contract without signatures - were
18 probably unlawful. There would be no reason to ask "legal" what should be done about signatures if
19 this was not the case.

20 188. The email shows that "legal" actually researched the issue of whether a signature was
21 required to change a commission plan. A legal professional at LabCorp or an outside law firm, more
22 likely than not, entered the words "does an employer adjustment to commission need to be signed"
23 into the Lexis research databases focused on California statutes. Labor Code section 2751 appears
24 as the number 2 search result with these word being in plain view with the heading in bold blue letters:

25 2. § 2751. Contract involving commissions; Duties of employer; Terms of expired
26 contract

27 CA - Deering's California Codes Annotated Cal Lab Code § 2751

28 LABOR CODE > Division 3. Employment Relations > Chapter 2. Employer and
Employee > Article 1. The Contract of Employment

1 Whenever an employer enters into a contract of employment with an employee for
services ...

2 ... state and the contemplated method of payment of the employee involves
3 commissions, the contract shall be in writing and shall set forth the method by which
the commissions shall be computed and paid. (b) The employer shall give a signed
4 copy of the contract to every employee who is a party thereto and shall obtain a signed
receipt for the contract from each employee. In the case of ...

5 ... terminated by either party. (c) As used in this section, " commissions" has the
meaning set forth in ... (emphasis added)

6 189. A legal professional at LabCorp or an outside law firm, more likely than not, clicked
7 on Section 2751 and read subsection (b) that says changes to commission pay must be signed by the
8 employee.

9 190. A legal professional at LabCorp or an outside law firm, more likely than not, entered
10 the words "labor code section 2751" into the Lexis research national cases database, the first case that
11 pops up is Swafford v. IBM, 408 F. Supp. 3d 1131, 1134 (N.D. Cal. 2019). The legal professional,
12 more likely than not, "Shepardized" the Swafford case, and that would have led the person to the
13 decision in Beard v. IBM, No. C 18-06783 WHA, 2020 U.S. Dist. LEXIS 62796, at *19 (N.D. Cal.
14 Apr. 9, 2020). Both cases clearly explain the problem with not having a signed contract for
15 commissioned employees. They explain why reliance on cases decided in favor of IBM is not a good
16 idea.

17 191. A legal professional at LabCorp or an outside law firm, more likely than not, advised
18 managing agents of LabCorp, including Chief Legal Officer Sandra van der Vaart that a signed
19 contract was required for commissioned employees and any changes must be signed by the employee.

20 192. Despite all of this, LabCorp lied and told Plaintiffs and other sales staff that LabCorp
21 could lawfully change the commission without a signature of the employee. LabCorp intentionally
22 told the sales staff that "legal" was involved to make it seem like the change was in fact legal, when
23 it was not and LabCorp knew this.

24 193. Chief Legal Officer Sandra van der Vaart, more likely than not, made a decision to hide
25 the California signature requirement from commissioned employees because LabCorp did not want
26 sales staff asking questions about why California sales representatives had signed agreements and
27 others outside California did not. van der Vaart did not want to alert the California sales staff about
28 their rights under Labor Code section 2751 so LabCorp lied. Without the lie, Plaintiffs would have

1 been paid commissions for PCR revenue.

2 194. Plaintiffs were damaged by LabCorp's fraudulent misrepresentations.

3 195. In doing the acts and/or failing to do the acts alleged herein above, the Defendants, and
4 each of them, engaged in fraudulent acts and conduct with malice towards Plaintiffs and/or a reckless
5 indifference to statutorily protected rights and in conscious disregard of the rights, both statutory and
6 common law, guaranteed Plaintiffs by the State of California. As such, Defendants are guilty of
7 oppression and malice for which Plaintiffs are entitled to punitive damages, in an amount to be proven
8 at trial.

9 196. Code of Civil Procedure §1021 provides that attorneys' fees are recoverable in an action
10 for which they are specifically provided by statute. Plaintiffs retained an attorney for the prosecution
11 of this action. As a result, Plaintiffs are entitled to reasonable attorneys' fees and costs herein incurred.

12 **FIFTH CAUSE OF ACTION**
13 **(Alternative Claim - Negligent Misrepresentation)**

14 197. The allegations of paragraphs 1 through 196 are re-alleged and incorporated herein by
15 reference.

16 198. Plaintiffs allege this claim in the alternative to the claim for fraudulent
17 misrepresentation. The same facts from above apply to this claim.

18 199. LabCorp owed Plaintiffs a duty of care in making these representations.

19 200. Plaintiffs reasonably and justifiably relied on the representations of LabCorp.

20 201. Plaintiffs were damaged by LabCorp's negligent misrepresentations.

21 202. In doing the acts and/or failing to do the acts alleged herein above, the Defendants, and
22 each of them, engaged in fraudulent acts and conduct with malice towards Plaintiffs and/or a reckless
23 indifference to statutorily protected rights and in conscious disregard of the rights, both statutory and
24 common law, guaranteed Plaintiffs by the State of California. As such, Defendants are guilty of
25 oppression and malice for which Plaintiffs are entitled to punitive damages, in an amount to be proven
26 at trial.

27 203. Code of Civil Procedure §1021 provides that attorneys' fees are recoverable in an action
28 for which they are specifically provided by statute. Plaintiffs retained an attorney for the prosecution

1 of this action. As a result, Plaintiffs are entitled to reasonable attorneys' fees and costs herein incurred.

2 **SIXTH CAUSE OF ACTION**
3 **(Alternative Claim - Quantum Meruit)**

4 204. The allegations of paragraphs 1 through 203 are re-alleged and incorporated herein by
5 reference.

6 205. Plaintiffs rendered valuable consideration to LabCorp, in the form of work performed
7 to sell PCR lab testing, for which they have not been paid. The consideration has a reasonable value.
8 The jury will determine the amount owed.

9 206. At the time that Plaintiffs performed the work, they reasonably expected to be paid by
10 LabCorp. The company received and benefitted from the work with knowledge or reason to know that
11 Plaintiffs expected to be paid. LabCorp voluntarily accepted the benefit of the work and kept the
12 benefits therefrom without waiving, refusing, or returning the benefit.

13 207. If LabCorp claims that there is no contract between the parties or that it is
14 unenforceable, Plaintiffs are entitled under the doctrine of quantum meruit to recover damages from
15 LabCorp.

16 **SEVENTH CAUSE OF ACTION**
17 **(Unjust Enrichment)**

18 208. The allegations of paragraphs 1 through 207 are re-alleged and incorporated herein by
19 reference.

20 209. A promise which is reasonably expected to induce action or forbearance on the part of
21 another person, and which does induce such action or forbearance, is binding if injustice can be
22 avoided only by enforcement of the promise.

23 210. At the specific request of LabCorp, and for its use and benefit, Plaintiffs have
24 performed work for LabCorp in the form of making sales of its products and services.

25 211. The value of the work performed for LabCorp by Plaintiffs will be determined by the
26 jury.

27 212. During and since the performance of the work by Plaintiffs, LabCorp has failed to pay
28 them and there is due and owing to Plaintiffs from LabCorp a principal sum amount of at least

1 \$249,765.

2 213. Despite Plaintiffs being owed commissions, LabCorp has failed and refused to pay the
3 same or any part of it.

4 214. As a result of LabCorp's refusal to pay Plaintiffs the above-stated sum due and owing
5 to them, LabCorp has become unjustly enriched.

6 **REQUEST FOR JURY TRIAL**

7 Plaintiffs, ALLON HULL and CHRIS SCHOTT, hereby requests a trial by jury.

8 **WHEREFORE**, Plaintiffs pray as follows:

9 1. For general damages in excess of the jurisdictional minimum of this Court, according
10 to proof;

11 2. For interest on the amount of losses incurred in earnings, deferred compensation and
12 other employee benefits at the prevailing rate;

13 3. For special damages according to proof;

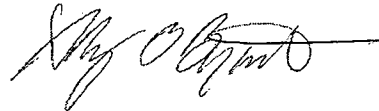
14 4. For punitive damages according to proof;

15 5. For cost of suit, including reasonable attorneys' fees; and

16 6. For such other and further relief as the Court may deem just and proper.

17 Dated: February 13, 2023

BRYANT WHITTEN, LLP

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19 _____
20 SHELLEY G. BRYANT, Attorneys for Plaintiff,
21 ALLON HULL and CHRIS SCHOTT
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